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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

CHARLES DANIEL HUBBARD,

Defendant and Appellant.

C088319

(Super. Ct. No. 13F04534)

Defendant Charles Daniel Hubbard appeals from the trial court's order declining to strike his firearm enhancements after this court remanded the case for resentencing so that the trial court could consider whether to exercise its discretion to strike the enhancements. (*People v. Hubbard* (May 16, 2018, C076181) [nonpub. opn.] (*Hubbard I*)). Appointed counsel for defendant filed an opening brief setting forth the facts of the case and asking this court to review the record to determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436 (*Wende*)). After reviewing the entire record, we affirm the judgment.

We provide the following brief description of the facts and procedural history of the case. (See *People v. Kelly* (2006) 40 Cal.4th 106, 110, 124.)

FACTUAL AND PROCEDURAL BACKGROUND

The facts underlying defendant's convictions are described in *Hubbard I, supra*, C076181, and we need not recount them here. The jury found defendant guilty of carjacking (Pen. Code, § 215, subd. (a)),¹ assault with a firearm (§ 245, subd. (a)(2)), and being a felon in possession of a firearm (§ 29800, subd. (a)(1)). The jury also found true the allegations that defendant personally used a firearm in the commission of the carjacking (former § 12022.53, subd. (b)) and the assault (former § 12022.5, subs. (a) & (d)). The trial court sentenced him to an aggregate prison term of 15 years eight months.² (*Hubbard I, supra*, C076181, at pp. 1-2.) On appeal, this court affirmed defendant's convictions but remanded the case to allow the trial court to exercise its discretion to strike the firearm enhancements in the interest of justice under sections 12022.53, subdivision (h) and 12022.5, subdivision (c), and if appropriate following the exercise of that discretion, to resentence defendant accordingly. (*Hubbard I*, at pp. 14-15.)

On remand, the trial court held a hearing to determine whether to exercise its discretion to strike the firearm enhancements. Following argument, the court noted that it had considered defendant's record and the "facts and circumstances of the case as presented by the transcript." The court acknowledged its discretion but declined to strike the enhancements under sections 12022.5 and 12022.53. Defendant again appeals.

¹ Undesignated statutory references are to the Penal Code.

² Defendant was sentenced to five years (the middle term) for the carjacking, plus a consecutive 10 years on the firearm enhancement, and a consecutive eight months (one-third of the middle term) for being a felon in possession of a firearm. Defendant's sentence for the assault with a firearm was stayed pursuant to section 654. (*Hubbard I, supra*, C076181, at p. 2, fn. 2.)

DISCUSSION

We appointed counsel to represent defendant on appeal. Counsel filed an opening brief that sets forth the facts and procedural history of the case and requests this court to review the record and determine whether there are any arguable issues on appeal. (*Wende, supra*, 25 Cal.3d 436.) Defendant was advised by counsel of his right to file a supplemental brief within 30 days from the date the opening brief was filed.

Defendant filed a supplemental brief asserting the trial court's exercise of its discretion was in error. He does not, however, raise a colorable claim. The trial court did not err in declining to strike the firearm enhancements.

Having undertaken an examination of the entire record pursuant to *Wende*, we find no arguable error that would result in a disposition more favorable to defendant. Accordingly, we affirm the judgment.

DISPOSITION

The judgment is affirmed.

/s/
BLEASE, Acting P. J.

We concur:

/s/
ROBIE, J.

/s/
DUARTE, J.